STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 26, 2001
v	No. 215189 Wayne Circuit Court
PAMELA VANNOY, Defendant-Appellant.	LC No. 98-000860

Before: Jansen, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of first-degree felony murder, MCL 750.316; MSA 28.548, and was sentenced to two terms of natural life in prison. She appeals as of right. We affirm.

The charges in this case arose from the brutal murders of Mary Lou Drury and Dorothy Gilbert. The victims were killed in their home and their bodies were hidden in a basement storage room. The women had been beaten, their hands and feet were bound with duct tape, and duct tape also covered their nose and mouth. Unlike Mrs. Gilbert, Mrs. Drury also sustained severe head injuries that were consistent with being pistol-whipped. Both bodies had scrapes which were consistent with being dragged across the floor. A plastic garbage bag covered each woman's head, and the evidence indicated they both died of suffocation.

The defendant and codefendant Vaughn[1] had a sporadic personal relationship. Defendant lived in the Drury home in an upstairs flat and both defendant and Vaughn worked occasionally for the Drurys. Defendant also cared for Mrs. Gilbert, who suffered from lung congestion and required supplemental oxygen. On the day of the murders, the Drurys informed defendant that she had to move out because she stole money from them. Both defendant and Vaughn said that they went to the Drury apartment shortly after Mr. Drury left. Vaughn claimed that he left before defendant killed the women. Defendant claimed that Vaughn killed the women in a rage and that

[1] Vaughn is not a party to this appeal, having challenged his conviction in a separate appeal, *People v Vaughn*, Docket No. 215190.

she could not stop him. Defendant and Vaughn were prosecuted in a joined trial with two separate juries.

Defendant first argues that there was insufficient proof that she possessed the requisite mens reas to be convicted of first-degree felony murder. We disagree. In sufficiency of the evidence claims, we view the evidence de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of a crime were proven beyond a reasonable doubt. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

In order to prove that defendant committed first-degree felony murder, the prosecution would have to introduce sufficient evidence that defendant (1) killed the victims, (2) with the intent to kill, to do great bodily harm, or to create a very high risk of death or great bodily harm with the knowledge that death or great bodily harm was the probable result, (3) while committing, attempting to commit, or assisting in the commission of any of the felonies specified in MCL 750.316(1)(b); MSA 28.548(1)(b). *People v Warren*, 228 Mich App 336, 346-347; 578 NW2d 697 (1998), rev'd on other grounds 462 Mich 415 (2000). A jury may infer intent to kill from the facts and circumstances involved in commission of the underlying felony. *People v Aaron*, 409 Mich 672, 728-729; 299 NW2d 304 (1980).

In this case, the jury received sufficient evidence from which it could reasonably infer that defendant acted with intent to kill or to do great bodily harm. The circumstances here show that the women's deaths resulted from intentional or, at least, wanton behavior that was highly likely to result in the deaths of both women. The evidence showed that the victims' airways had been closed off with duct tape and Gilbert was additionally cut off from her oxygen machine. The jury could reasonably conclude that this conduct demonstrated an intent to kill.

Furthermore, defendant's own statement to police supplies evidence of her intent and complicity in the murders. She said that she gave Vaughn the plastic bags which she then watched him put on each woman's head. She admitted to going to "get Ma [Gilbert]" from the bedroom and admitted that Vaughn was "taping" Gilbert when defendant went into a bedroom to search for money and jewelry. Defendant knew that Mary Lou and Gilbert were both alive when Vaughn put the bags over their heads. These statements show that defendant actively participated in the killing of the women and "intentionally set in motion a force likely to cause death." *Aaron, supra* at 729.

In the alternative, if the jury did not believe that defendant actually committed the murders herself, the jury could have reasonably concluded that defendant was guilty of aiding and abetting Vaughn in commission of the felony murders. Where felons act intentionally or recklessly in pursuit of a common plan, liability may be established by agency principles. *People v Flowers*, 191 Mich App 169, 178; 477 NW2d 473 (1991). Because defendant was aware that Vaughn intended to kill the women, her participation shows a wanton and willful disregard that would support a conclusion that she acted as an aider and abettor. Because the evidence was sufficient to prove that defendant either possessed the intent to kill the victims or actively assisted Vaughn in the killings, reversal of defendant's conviction is not warranted.

Defendant next claims that the trial court erred by failing to instruct the jury on accessory after the fact. We review a claim of instructional error de novo. *People v Hubbard (After Remand)*, 217 Mich App 459, 487; 552 NW2d 493 (1996).

A trial court's duty to instruct the jury on a lesser offense is determined by the evidence adduced at trial. *People v Veling*, 443 Mich 23, 35-36; 504 NW2d 456 (1993). If the evidence would support a conviction of a lesser offense, refusal to give a requested instruction is reversible error. *People v Hendricks*, 446 Mich 435, 442; 521 NW2d 546 (1994). Whether instruction on a lesser offense is required depends in part on whether the lesser offense is a "necessarily included" lesser offense or a "cognate" lesser offense. *Id*. at 442-443. A necessarily included lesser offense occurs where is it impossible to commit the greater offense without first committing the lesser offense. *Id*. at 443. A cognate lesser offense shares common elements with the greater offense and is in the same class or category as the greater offense, but has additional elements not found in the greater offense. *Id*.

Accessory after the fact is a common law offense, defined as "one who, with knowledge of the other's guilt, renders assistance to a felon in the effort to hinder his detection, arrest, trial or punishment." *People v Lucas*, 402 Mich 302, 304; 262 NW2d 662 (1978). It is apparent in this case that one can commit the greater offense, murder, without committing the purported lesser offense, accessory after the fact. Therefore, accessory after the fact is clearly not a necessarily included lesser offense of murder. *Hendricks*, *supra* at 443.

It is equally clear that that accessory after the fact is not a cognate lesser offense of murder. Accessory after the fact does not meet the test of a cognate lesser offense of murder because it is not in the same class or category as murder. *People v Perry*, 460 Mich 55, 62; 594 NW2d 477 (2000). The offense of accessory after the fact is akin to obstruction of justice and serves a very different purpose than the statute prohibiting murder. *Id*. Because accessory after the fact is neither a necessarily included lesser offense or a cognate lesser offense of murder, the trial court did not err in refusing to give the instruction.

Affirmed.

/s/ Kathleen Jansen
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell